



PATENT
Atty. Docket No. PP020001.0002

CERTIFICATE OF MAILING PURSUANT TO 37 CFR § 1.8

I hereby certify that this paper is being deposited in the United States Postal Service as first class mail with sufficient postage in an envelope addressed: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below:

Sharleen Lane
Sharleen Lane

June 5, 2007

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Chien, D. *et al.* Confirmation No. 9349
Appln. No.: 10/733,766 Group Art Unit: 1641
Filing Date: December 12, 2003 Examiner: Stephen C. Pohnert
Title: BIOLOGICAL SAMPLE STORAGE DEVICE AND METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING

TRANSMITTAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following documents are enclosed herewith:

1. Petition to Correct Inventorship under 37 CFR 1.48(a).
2. Consent of Assignee to Correct Inventorship under 37 CFR 1.48(a).
3. Statement from Person to be Added as Inventor under 37 CFR 1.48(a).
4. Revised Declaration for Patent Application (signed).
5. Assignment document: Inventor to Novartis Vaccines and Diagnostics, Inc.
6. Change of Name document: Chiron Corporation to Novartis Vaccines and Diagnostics, Inc.
7. Return Receipt Postcard.

The Commissioner is respectfully requested to act favorably on this Petition and amend inventorship as specified above. In addition, the Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.16 and 1.17 that may be required by this paper, or to credit any overpayment, to Deposit Account No. 03-1664.

Respectfully submitted,

NOVARTIS VACCINES AND DIAGNOSTICS, INC.

Date: 5/31/2007

By: Marcella Lillis

Marcella Lillis

Registration No. 36,583

NOVARTIS VACCINES AND DIAGNOSTICS, INC.
Intellectual Property - R338
P.O. Box 8097
Emeryville, CA 94662-8097
Telephone: (510) 923-8406
Facsimile: (510) 655-3542



PATENT
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Sharleen Fine
Name

Date

June 5, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Chien, D. *et al.* Confirmation No. 9349
Appln. No.: 10/733,766 Group Art Unit: 1634
Filing Date: December 12, 2003 Examiner: Steven C. Pohnert
Title: BIOLOGICAL SAMPLE STORAGE DEVICE AND METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING

PETITION TO CORRECT INVENTORSHIP UNDER 37 C.F.R. § 1.48(a)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed in order to correct the inventorship of the above-identified patent application under 37 C.F.R. §1.48(a). The inventorship as originally named was incorrect due to an error made without deceptive intent.

Applicants respectfully request that Yiu-Lian FONG be added as a coinventor to the application.

Accompanying this Petition is a Statement from Person to be Added as Inventor pursuant to 37 C.F.R. §1.48(a)(2), signed by Yiu-Lian FONG, a Consent of Assignee to Correct Inventorship under 37 C.F.R. §1.48(a) from Novartis Vaccines and Diagnostics, Inc., a Declaration for Patent Application signed by all the inventors, and the required fee pursuant to 37 C.F.R. §1.17(h).

06/12/2007 EFLORES 00000023 031664 10733766
01-1454 130.00 DA

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment in fees that may be due in this matter to Deposit Account No. 03-1664.

Respectfully submitted,

NOVARTIS VACCINES AND DIAGNOSTICS, INC.

Date: 6/5/07

By: Marcella Lillis
Marcella Lillis
Registration No. 36,583

NOVARTIS VACCINES AND DIAGNOSTICS, INC.
Intellectual Property – M/S R338
P.O. Box 8097
Emeryville, CA 94662-8097
Telephone: (510) 923-8406
Facsimile: (510) 655-3542



PATENT
Atty. Docket No. PP020001.0002

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Shaileen Jane
Name

June 5, 2007
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Chien, D. *et al.* Confirmation No. 9349
Appln. No.: 10/733,766 Group Art Unit: 1634
Filing Date: December 12, 2003 Examiner: Steven C. Pohnert
Title: BIOLOGICAL SAMPLE STORAGE DEVICE AND METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING

CONSENT OF ASSIGNEE TO CORRECT INVENTORSHIP
UNDER 37 C.F.R. § 1.48(a)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

Novartis Vaccines and Diagnostics, Inc., the assignee of the entire right, title and interest in and to the above-identified application, by virtue of assignments from the inventors of the patent application identified above, which are recorded at Reel/Frame 015172/0286, and the additional assignments, copies of which are attached, hereby consents to the request to correct inventorship of the above-identified application to designate Yiu-Lian FONG as an additional inventor.

Respectfully submitted,

NOVARTIS VACCINES AND DIAGNOSTICS, INC.

Date: 5/31/07

By: Marcella Lillis

Name: Marcella Lillis
Title: Assistant Secretary



PATENT
Atty. Docket No. PP020001.0002

CERTIFICATE OF MAILING PURSUANT TO 37 CFR § 1.8

Hereby certify that this paper is being deposited in the United States Postal Service as first class mail with sufficient postage in an envelope addressed: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below:

Name

Charleen Fane

Date

June 5, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Chien, D. *et al.*

Confirmation No. 9349

Appln. No.: 10/733,766

Group Art Unit: 1634

Filing Date: December 12, 2003

Examiner: Steven C. Pohnert

Title: BIOLOGICAL SAMPLE STORAGE DEVICE AND METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING

STATEMENT FROM PERSON TO BE ADDED AS INVENTOR
UNDER 37 C.F.R. § 1.48(a)(2)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

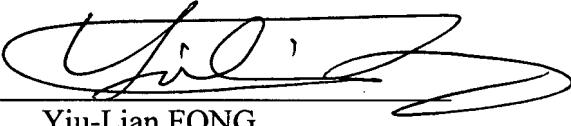
Sir:

I, Yiu-Lian Fong, hereby verify that the error in inventorship on the above-identified application occurred without deceptive intent.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 19 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 14 Mar 07

By:


Yiu-Lian FONG



PATENT
U. S. Patent Application No. 10/733,766
Atty. Docket No. PP-20001.002

REVISED DECLARATION FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**A BIOLOGICAL SAMPLE STORAGE DEVICE AND
METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING**

the specification of which (check one) _____ is attached hereto x was filed on **December 12, 2003**, as **U.S. Patent Application Serial No. 10/733,766** and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

=====

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

| <u>Prior Foreign Application(s)</u> | <u>Priority Claimed</u> | | | |
|-------------------------------------|-------------------------|-----------------------------|------------|-----------|
| <u>Number</u> | <u>Country</u> | <u>Day/Month/Year Filed</u> | <u>Yes</u> | <u>No</u> |

=====

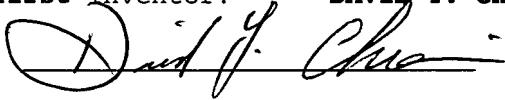
I hereby claim the benefit under Title 35, United States Code, §120 and/or 119(e) of any United States application(s) and/or provisional application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

| <u>Application</u> | <u>Filing Date</u> | <u>Status</u> |
|--------------------|--------------------|-------------------------------------|
| <u>Serial No.</u> | | <u>Patented, Pending, Abandoned</u> |
| 60/432,665 | December 12, 2002 | Abandoned |
| 60/435,287 | December 23, 2002 | Abandoned |

=====

I hereby declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or **first** inventor: **DAVID Y. CHIEN**

Inventor's signature: 

Date: 14 Mar 07

Residence: Alamo, California USA

Citizenship: United States

Post Office Address: c/o Novartis Vaccines and Diagnostics, Inc., P.O. Box 8097,
Emeryville, CA 94662-8097

Full name of **second** inventor: **BRUCE H. PHELPS**

Inventor's signature: 

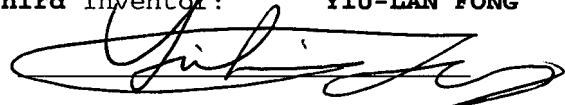
Date: 12 Jul 06

Residence: Clayton, California USA

Citizenship: United States

Post Office Address: c/o Novartis Vaccines and Diagnostics, Inc., P.O. Box 8097,
Emeryville, CA 94662-8097

Full name of sole or **third** inventor: **YIU-LAN FONG**

Inventor's signature: 

Date: 14 Mar 07

Residence: Lafayette, California USA

Citizenship: United States

Post Office Address: c/o Novartis Vaccines and Diagnostics, Inc., P.O. Box 8097,
Emeryville, CA 94662-8097

ASSIGNMENT

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WHEREAS, I,

YIU-LIAN FONG,

hereinafter referred to as **ASSIGNOR**, have invented certain new and useful improvements as described and set forth in the below-identified application for United States Letters Patent:

Title of Invention: BIOLOGICAL SAMPLE STORAGE DEVICE AND METHOD FOR BIOLOGICAL SAMPLE CONTAMINATION TESTING

Date of Execution: March 14, 2007

Filing Date: December 12, 2003

Application No.: 10/733,766

*WHEREAS, NOVARTIS VACCINES AND DIAGNOSTICS, INC., with a place of business located at 4560 Horton Street, Emeryville, California 94608 USA, hereinafter referred to as **ASSIGNEE**, is desirous of acquiring the entire right, title and interest in the above invention and application and in any Letters Patent which may be granted on the same;*

*NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to **ASSIGNOR** by **ASSIGNEE**, receipt of which is hereby acknowledged, **ASSIGNOR** has sold, assigned and transferred, and by these presents do sell, assign and transfer unto said **ASSIGNEE**, and **ASSIGNEE'S** successors and assigns, all right, title and interest in and to the said invention, said application(s) and any Letters Patent which may hereafter be granted on the same in the United States and all countries throughout the world including any divisionals, renewals, continuations in whole or in part, substitutions, conversions (including conversions claiming priority under 35 U.S.C. §119(e)), reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said **ASSIGNEE** as fully and exclusively as it would have been held and enjoyed by said **ASSIGNOR** had this assignment and transfer not been made, to the full end and term of any Letters Patent.*

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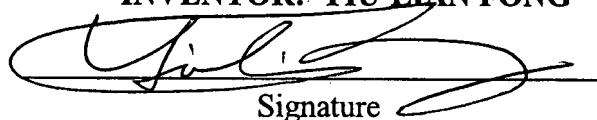
PATENT
Atty. Docket No. PP020001.0002

ASSIGNOR further agrees that he will, without charge to said **ASSIGNEE**, but at **ASSIGNEE'S** expense, cooperate with **ASSIGNEE** in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as **ASSIGNEE** lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said **ASSIGNEE**, or **ASSIGNEE'S** successors and assigns.

IN TESTIMONY WHEREOF, ASSIGNOR has hereunto signed his name to this assignment on the date indicated below.

Date 14 Mar 07

INVENTOR: YIU-LIAN FONG



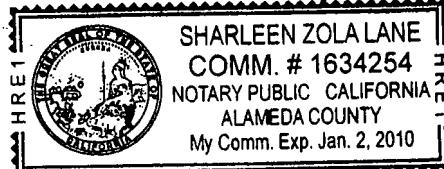
Signature

State of California)
)
County of Alameda)

On March 14, 2007 before me, Sharleen Zola Lane, Notary Public, personally appeared Yiu-Lian Fong, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sharleen Zola Lane
Signature of Notary Public



Place Notary Seal Above

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Delaware

The First State

PAGE 1

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"NOVARTIS BIOTECH PARTNERSHIP, INC.", A DELAWARE CORPORATION,

WITH AND INTO "CHIRON CORPORATION" UNDER THE NAME OF "NOVARTIS VACCINES AND DIAGNOSTICS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF APRIL, A.D. 2006, AT 12:25 O'CLOCK P.M.

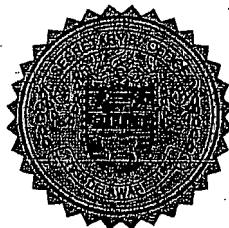
AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE TWENTIETH DAY OF APRIL, A.D. 2006, AT 12:01 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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2108457 8100M

060363242



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 4678437

DATE: 04-19-06

CERTIFICATE OF MERGER
of
NOVARTIS BIOTECH PARTNERSHIP, INC.
a Delaware corporation,
with and into
CHIRON CORPORATION
a Delaware corporation

Pursuant to Section 251(c) of the General Corporation Law of the State of Delaware (the "DGCL"), Chiron Corporation, a corporation organized and existing under the laws of the State of Delaware, does hereby certify as follows:

First: The name and state of incorporation of each of the constituent corporations of the merger (the "Constituent Corporations") are as follows:

| <u>Name</u> | <u>State of Incorporation</u> |
|------------------------------------|-------------------------------|
| NOVARTIS BIOTECH PARTNERSHIP, INC. | Delaware |
| CHIRON CORPORATION | Delaware |

Second: The Agreement and Plan of Merger, dated as of October 30, 2005, as amended, by and among Novartis Corporation, a New York corporation, Novartis Biotech Partnership, Inc., a Delaware corporation, Chiron Corporation, a Delaware corporation (the "Surviving Corporation"), and, for purposes of Section 10.14 thereof only, Novartis AG, a Swiss corporation (the "Merger Agreement"), has been approved, adopted, certified, executed and acknowledged by each of the Constituent Corporations in accordance with the requirements of Section 251 of the DGCL.

Third: The name of the surviving corporation of the merger is Chiron Corporation, subject to Article Fourth.

Fourth: At the effective time, the name of the Surviving Corporation shall be changed to Novartis Vaccines and Diagnostics, Inc. and the certificate of incorporation of the Surviving Corporation shall be amended and restated in the form of "Exhibit A," attached hereto and, as so amended, shall constitute the Amended and Restated Certificate of Incorporation of the Surviving Corporation. Said Certificate of Incorporation as so amended and changed shall continue to be the Certificate of Incorporation of said Surviving Corporation until further amended and changed in accordance with the provisions of the DGCL.

Fifth: The executed Merger Agreement is on file at the principal executive offices of the Surviving Corporation at 4560 Horton Street, Emeryville, California 94608.

Sixth: A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any Constituent Corporation.

Seventh: This Certificate of Merger shall be effective as of 12:01am on Thursday, April 20, 2006.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Merger as of
this 19th day April, 2006.

CHIRON CORPORATION

By: Howard H. Pien

Name: HOWARD H. PIEN
Title: Chairman of the Board;
Chief Executive Officer

EXHIBIT A

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
NOVARTIS VACCINES AND DIAGNOSTICS, INC.**

ARTICLE I

The name of the corporation is Novartis Vaccines and Diagnostics, Inc. (the "Corporation").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is 1,000 shares with a par value of \$0.01 per share. All such shares shall be of one class and shall be designated "Common Stock".

ARTICLE V

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders, it is further provided that:

Section 1. the number of directors of the Corporation shall be fixed by, or in the manner provided in, the By-laws of the Corporation;

Section 2. in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, amend or repeal the By-laws of the Corporation in any manner not inconsistent with the laws of the State of Delaware or this Amended and Restated Certificate of Incorporation, subject to the power of the stockholders of the Corporation having voting power to alter, amend or repeal the By-laws of the Corporation;

Section 3. in addition to the powers and authorities herein or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Delaware, this Amended and Restated Certificate of Incorporation and the By-laws of the Corporation;

Section 4. any director or any officer elected or appointed by the stockholders or by the Board of Directors, or any committee thereof, may be removed at any time by the unanimous consent of the stockholders or in such other manner as shall be provided in the By-laws of the Corporation; and

Section 5. unless and except to the extent that the By-laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE VI

No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to Section 174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit. The foregoing sentence notwithstanding, if the Delaware General Corporation Law hereafter is amended to authorize further limitations of the liability of a director of a corporation, then a Director of this corporation, in addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the Delaware General Corporation Law as so amended. Any repeal or modification of this ARTICLE VI by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE VII

No contract or transaction between the Corporation and one or more of its directors or officers (or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a

financial interest) shall be void or voidable solely for such reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

Section 1. the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

Section 2. the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

Section 3. the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders.

Common or interested directors shall be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes any such contract or transaction. No director or officer shall be liable to account to the Corporation for any profit realized by him or her from or through such contract or transaction solely by reason of the fact that he or she or any other corporation, partnership, association or other organization in which he or she is a director or officer, or has a financial interest, was interested in such contract or transaction.

ARTICLE VIII

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person, his or her testator or intestate is or was a director, officer, employee or agent of the Corporation or any predecessor of the Corporation, or is or was serving at the request of the Corporation or any predecessor of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts in connection with such action, suit or proceeding, in accordance with the laws of the State of Delaware, and to the full extent permitted by such laws. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding, by reason of the fact that such person, his or her testator or intestate is or was a director, officer, employee or agent of the Corporation or any predecessor of the Corporation, or is or was serving at the request of the Corporation or any predecessor of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the

Corporation as authorized by relevant sections of the Delaware General Corporation Law. Such indemnification shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, including insurance purchased and maintained by the Corporation, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The foregoing provisions of this Article VIII shall be deemed to be a contract between the Corporation and each director who serves in such capacity at any time while this Article VIII is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based on whole or in part upon any such state of facts.

ARTICLE IX

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation (including provisions as may hereafter be added or inserted in this Amended and Restated Certificate of Incorporation as authorized by the laws of the State of Delaware) in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Amended and Restated Certificate of Incorporation in its current form or as hereafter amended are granted subject to the right reserved in this Article IX.